

BEFORE THE

# Federal Communications Commission

WASHINGTON, D.C. 20554

In the Matter of )  
 )  
Review of the Commission's )  
Rules and Policies )  
Affecting the Conversion )  
to Digital Television )  
 )

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MAY 17 2000  
FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

MM Docket No. 00-39

To: The Commission

**COMMENTS OF**  
**DAVIS TELEVISION PITTSBURG, LLC; DAVIS TELEVISION DULUTH, LLC;**  
**DAVIS TELEVISION FAIRMONT, LLC;**  
**DAVIS TELEVISION CORPUS CHRISTI, LLC; DAVIS TELEVISION TOPEKA, LLC;**  
**AND DAVIS TELEVISION WAUSAU, LLC**

**I. INTRODUCTION**

Davis Television Pittsburg, LLC ("Davis Pittsburg"), applicant for a construction permit for a new television broadcast station to operate on Channel 14 at Pittsburg, Kansas; Davis Television Duluth, LLC ("Davis Duluth"), applicant for a construction permit for a new television broadcast station to operate on Channel 27 at Duluth, Minnesota; Davis Television Fairmont, LLC ("Davis Fairmont"), applicant for a construction permit for a new television broadcast station to operate on Channel 66 at Fairmont, West Virginia; Davis Television Corpus Christi, LLC ("Davis Corpus Christi"), applicant for a construction permit for a new television broadcast station to operate on Channel 38 at Corpus Christi, Texas; Davis Television Topeka,

LLC ("Davis Topeka"), applicant for a construction permit for a new television broadcast station to operate on Channel 43 at Topeka, Kansas; and Davis Television Wausau, LLC ("Davis Wausau"), permittee of television broadcast station WFXS(TV), Channel 55 at Wittenberg, Wisconsin, hereby comment on the Commission's Notice of Proposed Rule Making in the above-captioned proceeding, FCC 00-83 (released March 8, 2000) (the "Notice"). Davis Corpus Christi, Davis Duluth, Davis Fairmont, Davis Pittsburg, Davis Topeka and Davis Wausau are commonly owned and are hereinafter referred to as "Davis."

## **II. BACKGROUND**

The Notice seeks comment on a wide ranging set of issues related to the ongoing conversion of the United States television industry from analog technology ("NTSC") to digital television ("DTV"). One aspect of the Notice is of particular importance to Davis: whether the Commission should adopt a priority scheme in order to clarify the extent to which NTSC applications might be granted protection from later-filed DTV applications, and at what point such protection should be afforded. For the reasons set forth below, Davis strongly believes that long pending NTSC applications for new television stations, many of which were filed with the Commission years ago, as well as out-of-core NTSC permittees like Davis Wausau who need a paired DTV station, should be afforded priority against later-filed DTV facilities modification applications as well as DTV allotment petitions seeking to change DTV channels. Davis believes that it is in the best interests of the public for the Commission to protect NTSC applicants and permittees to this extent so that these applicants and permittees can expeditiously provide broadcast television service to the public.

### III. THE COMMISSION SHOULD PRIORITIZE LONG PENDING NTSC APPLICATIONS

In the Notice, the Commission notes that “[a]pplications for new NTSC stations in the areas subject to the TV freeze and rule making petitions to add new NTSC channels were not protected or otherwise accommodated in the development of the initial DTV table of allotments or subsequent amendments to that initial table.” Notice at ¶ 49. The Notice goes on to recognize the Commission’s decision to require, *inter alia*, all new NTSC station construction permit applications seeking waivers of the TV application freeze to submit amendments or propose substitute channels as necessary so that all such applications would “protect all DTV stations, including authorized DTV stations, facilities requested in DTV station applications, DTV allotments and rule making proposals to change or add a DTV channel allotment.” Id at ¶ 50. The Commission invited comment on the extent to which these NTSC applications could have protection from later-filed DTV applications and at what point such protection should be afforded. Particularly given the obstacles previously placed in the path of these NTSC applications, Davis believes that protection of new NTSC applications is now long overdue and should become an immediate Commission priority, before competing proposals squeeze these NTSC applicants out of their respective markets entirely.

As the Commission has noted, the Commission has adopted and amended the DTV table of allotments and made numerous DTV stations, applications, allotments and rule making proposals without protecting NTSC applications over the last several years. At this juncture, however, time is running out. *Now is the time to process NTSC applications and allow these applicants to put these stations on the air.*

Many NTSC new station applications have been on file at the Commission for *years*. Davis Pittsburg, Davis Duluth, Davis Fairmont, Davis Corpus Christi and Davis Topeka have had applications for new NTSC stations on file with the Commission since September 20, 1996, or more than *three and a half years*. The particulars of each application from that date vary, but all are compelling. For example, Davis Pittsburg filed a joint request for approval of a universal settlement *over two years ago*, pursuant to Congressional authority instructing the Commission to waive any provisions of its regulations necessary to permit mutually exclusive applicants for new commercial television stations to enter into an agreement to procure the removal of a conflict between their applications. See 47 U.S.C. § 309(l). Instead of granting the settlement agreement, the Commission has made allotment decisions that only serve to complicate the technical environment in which Davis Pittsburg is trying to initiate service. While it may well be true that "the future of television is DTV," Notice at ¶ 49, the public will *continue to be denied needed new service in the present* if every contingent interest of DTV stations is placed ahead of NTSC applicants. Davis Pittsburg is eager to build a television station *now* to serve the *present* needs of the public. After doing so, it can plan for a digital future that will *continue* to serve the public. But Davis Pittsburg, like other NTSC applicants, *cannot provide service to the public* if its proposals are not given fair consideration and equitable protection.

There exists a small, finite number of pending applications for new NTSC broadcast television stations.<sup>1</sup> This small group of affected applicants for the last of the unbuilt analog stations finds itself in a unique situation, trapped in the difficult, expensive and risky transitional

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<sup>1</sup> In 1996 the Commission stopped accepting petitions to add new NTSC channels and applications for new NTSC stations. Notice at ¶ 49.

phase from analog to digital broadcasting. These applicants are confronted with the prospect of constructing costly facilities that face obsolescence in a matter of years, without the security of a paired DTV channel on which to broadcast after the transition to digital television is complete. The ability of after-filed DTV modification applications and allotment change petitions to preempt their plans makes the future even that much more uncertain. Applicants like Davis Pittsburg must finally be given meaningful processing priority so that they can plan accordingly and provide needed service to the public.

NTSC television applicants have made significant investments of time and money in the hope that they would be able to serve the public in an expeditious manner. In addition, out-of-core NTSC permittees such as Davis Wausau (Channel 55) have been promised the ability to secure a DTV channel in the Channel 2-51 core when the Commission determines that there are available channels. Accordingly, these permittees are proceeding in reliance on this promise, pouring millions of dollars and substantial effort into constructing and operating their stations. Their plans, however, may be dashed by new DTV applications and petitions that usurp all available channels in the core. Accordingly, Davis calls on the Commission to adopt a priority scheme that prudently and equitably favors NTSC applicants and out-of-core permittees.


#### **IV. CONCLUSION**

There is no reason to continue to deny the rights of NTSC applicants and permittees in favor of DTV stations, applications, petitions and rule makings that have already benefitted from years of preferential treatment. The Commission has the opportunity to protect long-neglected NTSC applications from further damage and confer upon the public the benefits that NTSC stations continue to offer. Accordingly, for the reasons stated above, Davis requests that the Commission

prioritize NTSC applications and out-of-core NTSC permittees in accordance with these comments.

Respectfully submitted,

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DAVIS TELEVISION DULUTH, LLC  
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May 17, 2000